U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 2 4 2013 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in business. The petitioner seeks employment as the president and chief executive officer (CEO) of [redacted] a telecommunications company. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner has not established that he qualifies for classification as an alien of exceptional ability in business or as a member of the professions holding an advanced degree, or that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits his own statement, a witness letter, and additional exhibits relating to his business ventures.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

PROFESSIONAL WITH ADVANCED DEGREE

The first of three grounds for denial concerns the petitioner's eligibility for classification as a member of the professions holding an advanced degree. The petitioner made no claim to be eligible for that classification, but the director made a finding on the issue which the AAO will address here.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(2) includes the following relevant definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
>
> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

> (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner filed the Form I-140 petition on December 3, 2010. In the denial notice, dated July 18, 2012, the director stated that the petitioner had documented a degree from the [redacted] and [redacted]' An evaluation of the petitioner's degree from [redacted] found it to be equivalent to "[t]hree years of coursework towards [a] Bachelor of Science in Computer Science" from a regionally accredited United States college or university. Thus, the petitioner's degree from [redacted] is not equivalent to a four-year bachelor's degree. The evaluation did not address the certificate from [redacted] and the petitioner submitted no evidence that his efforts there constituted college-level academic study rather than non-degree vocational or technical training.

The evaluation indicated that the petitioner's work experience conveyed sufficient expertise that the petitioner could be said to hold the equivalent of a bachelor's degree. The regulation at 8 C.F.R. § 204.5(k)(3)(ii), however, does not recognize work experience to be equivalent to a bachelor's degree, either in whole or in part.

The director found that the petitioner does "not have a United States baccalaureate degree or a foreign equivalent degree from a college or university," and therefore cannot qualify for classification as a member of the professions holding either an advanced degree or its defined

equivalent. The petitioner, on appeal, has not contested this finding, and therefore there is no need to explore the issue in greater depth.

EXCEPTIONAL ABILITY

The second ground for denial concerns the petitioner's claim to qualify for classification as an alien of exceptional ability in business, defined as "a degree of expertise significantly above that ordinarily encountered in business." 8 C.F.R. § 204.5(k)(2).

The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii) states that, to show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
>
> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
>
> (C) A license to practice the profession or certification for a particular profession or occupation;
>
> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
>
> (E) Evidence of membership in professional associations; or
>
> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The petitioner, in his introductory statement submitted with the petition, claimed to have met the first four of the above six requirements. Discussion of these claims follows.

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability*. 8 C.F.R. § 204.5(k)(3)(ii)(A)

As noted previously, the petitioner submitted documentation of his two-year degree from [redacted] and his technical training at [redacted] The director found that this documentation satisfied the plain wording of the above regulation.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

On Form ETA-750B, Statement of Qualifications of Alien, the petitioner listed three past positions:

President/CEO (full time)		February 1999-November 2008
Owner/President (part time)		October 2007-November 2008
President/CEO (full time)		November 2008-Present

Letters from the vice president of and the general manager of affirm the periods of employment claimed above (although specified that the petitioner served as the company's vice president until January 2010 and as president/CEO thereafter). Clients and customers offered general letters of recommendation as well. The director found that the petitioner had established the necessary experience.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

To satisfy this criterion, the petitioner cited his The document is not a license that the petitioner holds as an individual. Rather, it is an "International Telecommunications Certificate" through which the Federal Communications Commission allows a company (in this case "to provide facilities-based service." The record indicates that this certificate is not a distinction between average and exceptional workers in the petitioner's field, but rather a fundamental document that every telecommunications carrier must possess in order to conduct business lawfully.

In a request for evidence (RFE) issued September 26, 2011, the director stated that the belongs to a company, rather than to the petitioner as an individual. The petitioner responded to the RFE, but his response did not address this issue.

In denying the petition, the director repeated the observation that the petitioner had not submitted any evidence of individual licensure or certification, and that corporate licensure does not establish the exceptional ability of one particular executive or official of that corporation. The petitioner, on appeal, does not address or contest this finding.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

In his introductory statement, the petitioner cited "Bank of America Statements showing average USD 80,000 individual yearly income for the current year, as remuneration from both the foreign and the U.S. Corporation." The petitioner submitted no evidence to support the implied claim that

remuneration totaling $80,000 per year is exceptional for the CEO of a telecommunications company in the United States.

The petitioner submitted copies of contracts, invoices, and other documents reflecting [redacted] corporate income, but the corporation's income is not salary or remuneration paid to the petitioner. Copies of [redacted] corporate tax returns indicated that the company's gross receipts for 2008 totaled $78,000, less than the petitioner's claimed "average . . . individual yearly income." The 2008 net taxable income after expenses was $1,845. In 2009, [redacted] again paid no salaries or officer compensation (despite claiming four employees on other 2009 tax documentation); its taxable income was $24,936, from gross receipts totaling $104,896.

The 2009 individual income tax return that the petitioner jointly filed with his spouse identified only one source of income, a $23,951 "Distribution from C-Corporation." The petitioner failed to explain how this level of personal income demonstrates exceptional ability in business.

In the September 2011 RFE, the director stated that the petitioner had not submitted any evidence to show a level of compensation that demonstrates exceptional ability. The petitioner's response to the RFE does not address this issue.

The director, in denying the petition, stated that the petitioner submitted no evidence of his compensation except for the tax return showing a $23,951 distribution. The director concluded that this level of income does not indicate a degree of expertise significantly above that ordinarily encountered in business.

On appeal, the petitioner does not respond to this finding.

In short, the director found that the petitioner had submitted evidence to satisfy the plain wording of only two of the six regulatory standards listed at 8 C.F.R. § 204.5(k)(3)(ii). As such, the director found that the petitioner had not put forth a *prima facie* sufficient claim of exceptional ability in business. On appeal, the petitioner does not challenge this finding, and, therefore, the petitioner has abandoned that claim. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005) ("When an appellant fails to offer argument on an issue, that issue is abandoned."). *See also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff abandoned his claims as he failed to raise them on appeal to the AAO).

The petitioner's evidence, on its face, addresses only two of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). Where the petitioner fails to submit the requisite evidence, the proper conclusion is that the petitioner failed to satisfy the regulatory requirement of three types of evidence. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (a decision pertaining to section 203(b)(1)(A) of the Act but containing legal reasoning pertinent to the classification in the current matter before the AAO).

The AAO will affirm the director's undisputed finding that the petitioner has failed to establish exceptional ability in business.

NATIONAL INTEREST WAIVER

The third and final ground for denial concerns the national interest waiver of the statutory job offer requirement. Because the petitioner did not claim to qualify as a member of the professions holding an advanced degree, and did not overcome or even contest the finding that he has not shown that he qualifies for classification as an alien of exceptional ability in business, the petitioner is facially ineligible to apply for the waiver. Nevertheless, the director addressed the waiver application on its merits, and the AAO will therefore do the same.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In an introductory statement dated November 26, 2010, the petitioner stated that he owns 83% of which in turn owns 51% of He described the companies' operations:

> is a Telecommunications Operator Dully [*sic*] licensed by the Government PTT ministry, and ran a million US dollars operations during the last 2 years. . . .
>
> The corporation has been created as a subsidiary of sprl, for the purpose of increasing the Volume of our current VOIP Carrier Telecommunication Operations in and extending them to other countries all over the World.
>
> Our Strategy is to deploy our POP (Point of presence) in the most Developed Telecommunication network infrastructures of the world (U.S.A.) in order to better interconnect with worldwide market exchange platforms, to better sell our routes and buy other Worldwide Telecoms Operators' routes as well, to increase our initial one million USD yearly operations to multi-millions USD yearly, and Contribute to the welfare of the [U]nited States economy as well. . . .
>
> As part of Our Vision, secondary activity is the export from the United States market to the African Market of US manufactured products, mainly used products, such as vehicles (SUV, truck, and cars), computers, network/ telecommunication devices and food products.
>
> . . . With the understanding that is a young corporation, still in its second year of existence, with a started up [*sic*] which was immediately followed by the biggest worldwide financial crisis of the history [*sic*], the growth of our Operations during our first two years at was not as fast as we had projected. However, things are being put together and efforts being made to make 2011 a year of fast global growth and substantial business development, to pay more taxes, create jobs and contribute to the US National economy improvement.

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter*

of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The petitioner has essentially acknowledged that his company's early performance was unremarkable, but claims that it will see significant growth and success in 2011. The petitioner's optimism about 2011 is not grounds for approving a petition filed in 2010.

The petitioner states that his status as an L-1A nonimmigrant intracompany transferee has limited his ability to travel internationally, which "has been an obstacle to the expansion of markets to other African countries." Permanent resident status would certainly benefit the petitioner, but it does not necessarily follow that it is in the national interest to grant the waiver.

The petitioner quoted the regulations at 8 C.F.R. § 204.5(k)(3)(ii), stated that he met "three of the [listed] requirements," and "thus met the necessary requirements to be eligible for [the] National Interest Waiver." Those requirements, however, relate to exceptional ability, not the national interest waiver. Setting aside the finding that the petitioner did not actually meet three of the requirements, aliens of exceptional ability are not automatically or presumptively exempt from the job offer requirement. Rather, they must make a separate showing that a waiver of the job offer requirement would be in the national interest.

The petitioner submitted various documents showing that operates in the United States, but he did not explain how his work for Intraco serves the interests not only of his company and its clients, but of the United States as a whole.

As noted previously, the petitioner submitted a copy of 2008 and 2009 corporate tax returns. The petitioner did not claim that the income figures reported on those returns stand out in the field, instead blaming the global economic downturn for the company's sluggish initial performance. Of particular concern is how the returns describe on Schedule K, line 2 of the returns. That section of the 2008 described "business activity" as "sales," and its "product or service" as "food." In 2009, that section listed "business activity" as "wholesales," and again listed the "product or service" as "food." Also on Schedule K of both tax returns, the petitioner answered "no" when asked whether "the corporation [is] a subsidiary in an affiliated group or a parent-subsidiary controlled group."

The petitioner's own introductory statement contradicts the above information, referring to as "a subsidiary of for which the export of "food products" is a "secondary activity." The petitioner's L-1A nonimmigrant status requires a qualifying relationship between his United States employer and a foreign corporation. The petitioner did not explain why tax returns repeatedly described the company as a food wholesaler that is not a subsidiary of any other entity.

Furthermore, Schedule G of the 2009 corporate tax return states that the petitioner, as an individual, owns 51% of A stock certificate in the record, however, indicates that – not the petitioner as a private individual – owns 51% of The petitioner himself, in his introductory letter, stated:

has two Share Holders:

1) 51% owned by sprl (a based Corporation, owned and represented by myself . . . 83% and my Spouse . . . 17%).
2) a U.S. Citizen (49%).

If the petitioner is not the sole owner of then he does not personally own 51% of as claimed on the tax return that he signed. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The AAO notes that the petitioner himself signed the 2009 corporate tax return. Therefore, he bears personal, nondelegable responsibility for the accuracy and truthfulness of the information on that return. *Cf. Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533 (1991).

The record contains a June 2, 2009 "Sales and Purchase Contract" in which agreed to purchase 263 metric tons of corn meal from General Groceries USA for $99,940. The 2009 corporate tax return, meanwhile, listed total "Cost of goods sold" for the entire year as $49,105, less than half the amount shown on the contract.

There are two signatures with corporate seals on the General Groceries contract. The seal of General Groceries and the signature of its president, are both electronically reproduced, indicating either that the contract is a color photocopy, or that color copies of the signature and seal have been printed directly onto the first-generation contract. The seal of and the petitioner's signature on the company's behalf, however, are both original. The signature is in blue ballpoint ink and the seal is raised on the document.

The petitioner signed the June 2009 General Groceries contract as the "President CEO" of According to co-owner and now vice president, the petitioner "has been employed by from November 2008 through January 2010 as Vice President of Operations, and from January 2010 to this day, as President/Chief Executive Officer." Thus, the record contains contradictory claims about whether the petitioner was president and CEO of in June 2009.

In the September 2011 RFE, the director instructed the petitioner to submit documentation to meet the guidelines set forth in *NYSDOT*. The director noted the figures on 2008 and 2009 tax returns, and stated: "the history of the company so far does not establish the beneficiary will provide such benefit to the United States so as to justify waiver of labor certification." The director acknowledged the petitioner's expectations of future growth, but noted that "[t]he petitioner must

establish . . . a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner described the histories of various companies he has run. The petitioner stated that, in 2007 and 2008, was the most prosperous VOIP [voice over Internet protocol] carrier" in the The petitioner submitted no evidence to show that his company outperformed others in that country. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner asserts that, taken together, his various companies serve a wide client base including "the Noting the potential for development in Africa, the petitioner states: "our vision is to establish on the ground in the U.S. market to be a useful platform of transactions between the US market (Provider) and the Market (Consumer) for the benefit of the United States."

The petitioner submitted documentation of his ownership of the companies he discussed, and establishing "that is a successful and reliable Telecommunication Operator in the The submitted documentation, including contracts and financial records, show that the company has done business, but offers no meaningful way to compare the company's performance with that of its (unidentified) rivals.

The petitioner acknowledged that, in terms of telecommunications infrastructure, the is very different from the United States, and that income in the about $2.5 million, is considerably less significant in United States terms than in terms. Because the petitioner seeks an immigration benefit based on the national interest of the United States, it cannot suffice for the petitioner to observe that his achievements are more significant from the point of view of another country. The petitioner did not claim to have made significant contributions to the United States telecommunications industry, either within the country or in terms of promoting international trade. Instead, he blamed economic factors for delaying predicted future success.

The director denied the petition, stating that the petitioner had provided "no independent appraisal of [his] business success." The director acknowledged the petitioner's evidence, but found that the evidence did not establish the petitioner's "influence on the field of business in the or that his United States business ventures "will provide a future benefit to the United States as a whole."

The petitioner devotes his appeal entirely to the issue of the national interest waiver. The petitioner speculates that the director "accidentally skipped" "some statements [in the petitioner's] cover letters." Elaborating on this point in an accompanying brief, the petitioner takes issue with the following passage from the director's decision, in which the director found that the petitioner had not shown that the benefit from his work would be national in scope:

> While your company trades internationally, the record does not establish that your business operations in the United States extend beyond Thus, it does not appear that you will offer employment on a national basis. While you state in your letter, you will be promoting business for U.S. corporations in the market, you have not provided any documentary evidence you are currently doing so or that you have plans to do so in the future.

The petitioner asserts that he previously submitted evidence of his ownership of which has maior clients in the The petitioner asserts: "I have a substantial and actual Market in where to sell Technology Products (Hardware and software) as well as Satellites services and VOIP Services from the United States Market." The petitioner asserts that he had previously documented the existence of "High performance VOIP Telecommunication Platforms . . . at the Facilities and at the Facilities, here in the United States." The petitioner does not explain how this arrangement will benefit the United States on a national scale.

An alien entrepreneur may qualify for the national interest waiver, but to do so, the entrepreneur must do more than simply establish that he or she is actively engaged in business. By statute, aliens of exceptional ability in business are usually subject to the job offer/labor certification requirement. General assertions about the value of business address the intrinsic merit of entrepreneurship, but do not by themselves serve to distinguish the petitioner from other entrepreneurs.

The petitioner claims to be "one of the very rare Citizen Entrepreneurs to own a Licensed Telecommunications Services Corporation," and as such to "have a huge Market available to sell U.S. market's products: Services, hardware and software." The petitioner contends: "As per the scale of evaluation, this can be considered as 'beyond that achieved by any small business.'" The petitioner seeks an immigration benefit from the United States, and as such "the scale of evaluation" is not a relevant measure of the petitioner's real or potential impact on the United States.

With respect to the lack of evidence that he has created jobs for United States workers, the petitioner asserts that different fields of business create jobs at different rates, and that his chosen field requires "a reasonably longer time of preparation." The petitioner asserts that he has run for "only 3 years now," and that his company's future efforts will have a broader national reach. As noted previously, the alien must be eligible for the benefit sought at the time he applies or petitions for that benefit. It cannot suffice for the petitioner to file the petition when his company is still embryonic, on the expectation that it will bear fruit several years later. The petitioner has not established a track record of job creation in the United States, or for that matter in the he has shown only that he has run companies. Rather, he has claimed that his nonimmigrant status has limited his ability to run his business effectively, and that the situation will improve once he holds permanent resident status. The petitioner's expectation of future success is not evidence of eligibility as of the filing date.

The petitioner submitted several exhibits relating to his companies' "most recent activities," including purchase orders dated 2012 and schematics dated 2011. These materials post-date the filing of the petition in December 2010. Even then, facially they show only that the petitioner's companies continue to conduct business. They do not distinguish the petitioner from his peers or otherwise show that the petitioner qualifies for a national interest waiver under the *NYSDOT* guidelines. The petitioner offers no objective basis for comparison between his companies' performance and that of other companies engaged in similar business.

In a new letter, stated that the petitioner "has brought very substantial business to requiring to add staff both in Florida and California to support the business." provided no specific figures to clarify this rather vague claim.

To qualify for consideration for the national interest waiver, the petitioner must first establish eligibility for classification under section 203(b)(2) of the Act, either as a member of the professions holding an advanced degree or as an alien of exceptional ability in the sciences, the arts or business. The director found that the petitioner had failed to show eligibility under either type of classification, and the petitioner, on appeal, has not disputed or overcome that finding. The petitioner has contested the finding that he does not qualify for the national interest waiver, but his appeal consists essentially of evidence of recent business transactions, coupled with unsupported claims that he is unusually accomplished in his field. On the basis of the evidence submitted, the petitioner has not established that he qualifies for the classification sought, or that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.